WP(C) 4086/2007
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA

JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. B. Chetri, learned counsel for the petitioner as well as Mr. G. Das, learned counsel led by Mr. L. Talukdar, learned counsel appearing for the respondent Bank.

2. This writ petition has been filed against the order dated 06.03.07 (Annexure-I) passed by the Recovery Officer of Debt Recovery Tribunal (DRT) pursuant to show cause notice issued to the petitioner. From the materials on record, it appears that the petitioner took loan from the respondent bank way back in 1984. The loan amount was secured by-

(i) Pledge of stocks of fertilizer, pesticides, seeds, Agri equipments/machineries, veterinary, plants and grafts and receivable in the firms head office and retail outlets.
(ii) Pledge of STDRs for Rs. 2.35 Lacs and cash certificate maturity value Rs. 50,000/-.
(iii) Assignment of LICI policies of Rs. 3 Lacs in favour the bank.
(iv) Personal guarantee of Sri Mritunjoy Ghosh and Shri Madan Mohan Kundu.
(v) Two vehicles- one Ambassador Car No. AMZ 772 of the company and one T.D.V. (Truck) No. AMK 772 in the name of Shri M. Ghosh to be Hypothecated to the Bank.

3. When the petitioner failed to repay the loan along with the interest, the bank instituted a proceeding against the petitioner and others by way of instituting Money Suit No. 1/94. The suit was decreed ex-parte on 11.01.96. As per the said judgment and decree, the petitioner is liable for payment of an amount of Rs. 21,41,832.29.

4. After the aforesaid judgment and decree, the respondent bank instituted Money Execution Case No. 14/97 and the same has been transferred to the DRT, Guwahati on 27.03.98 and the same has been renumbered as O.A. No. 39/98.

5. By Annexure-D order dated 10.04.2000, the DRT while granting the certificate of recovery issued direction to the Recovery Officer to realize the amount in terms of the certificate and as per mode prescribed under Sections 25 and 28 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 from the certificate debtors.

6. After the aforesaid certificate, the Recovery Officer, DRT submitted report of attachment of land and house of the petitioner on 27.05.07. Accordingly, the Recovery Officer on 21.03.07 granted liberty to the respondent bank to carry out auction sale against the attached property of the petitioner. After the aforesaid development, the petitioner was issued with a notice dated 15.06.05 asking him to file affidavit declaring the particulars of the assets to satisfy the certificate amount. It was intimated that upon failure to furnish such particulars, action in the matter will be taken as per the provision of the Act.

8. Pursuant to the aforesaid notice, the petitioner submitted an affidavit declaring his assets. Thereafter, the petitioner by his application dated 18.07.06 raised certain pleas relating to the judgment and decree passed way back in 1996. According to the petitioner he discovered certain relevant documents of the year 1993 indicating adjustment of certain amount towards liquidation of the loan taken by the petitioner. Raising this plea, the petitioner along with other judgment debtors made Annexure-H application to the Tribunal on 11.01.07. From the application, it appears that same was filed by all the judgment debtors which included the petitioner as well. By the said application, the petitioner prayed for acceptance of the purported documents of 1993 in connection with the afores

aid OA No. 39/98. The order passed on the said application is under challenge in this proceeding.

9. The Tribunal has rejected the said application by the impugned order dated 06.03.07. The Tribunal has noticed that the petitioner and other judgment debtors never objected to the judgment passed in 1996. At no point of time, the order of attachment passed by the Tribunal was put to challenge by any of the judgment debtors. But only when the steps were taken by the Tribunal towards realization of the loan amount, the petitioner took the aforesaid plea of recovery of important document of 1993. This is nothing but a device to delay the recovery of the loan amount and the interest thereon. The Tribunal has rightly rejected the application.

10. By filing the application the petitioner disputed the correctness of the amount indicated in the judgment and decree. This has been done after long years of the judgment and decree passed by the Court. It has been rightly held by the Tribunal that the allegations made by the petitioner cannot help his case. The Tribunal has given further opportunity to the judgment debtors to pay the certificate amount before taking any further steps against them as per law. The writ petition was filed at the time when the matter was fixed by the Tribunal on 17.04.07.

11. Mr. Pathak, learned counsel appearing for the applicant, Mr. Mrityunjay Ghosh, submits that said Shri Ghosh is a necessary party to this proceeding as he is the Managing Director of the Firm represented by the petitioner. To be precise, the petitioner is the Director of the Firm while Shri Ghosh is the Managing Director of the same.

12. As noticed above, the judgment and decree has been passed against the Firm represented by the writ petitioner as well as by said Mr. Ghosh. The application filed by Mr. Ghosh is only to delay the present proceeding. On being asked as to what further material could be placed by Mr. Ghosh, Mr. Pathak repeated the same very arguments advanced by Mr. B. Chetri, learned counsel for the petitioner. Since the Firm is represented by the petitioner, there is no necessity to implead the Managing Director of the Firm. But for ends of justice, learned counsel representing Mr. Ghosh has also been heard.

13. It is matter of serious concern. The petitioner Firm although obtained the loan 23 years back, but till date they have not repaid the same. Their whole endeavour is to delay the recovery process. Further as per the provisions of the Act, they had remedy elsewhere. I do not find any infirmity in the orders passed by the Tribunal. The judgment and decree passed way back in 1996 has attained its finality and cannot be allowed to be diluted in the form and device adopted by the petitioner by way of the application made in January, 2007 on the ground of discovery of important document of 1993.

14. For the forgoing reasons, the writ petition is dismissed. The respondent Bank is at liberty to take appropriate action in accordance with law.